



BABERGH DISTRICT COUNCIL AND MID SUFFOLK DISTRICT COUNCIL CODE OF CONDUCT COMPLAINTS PROCEDURE

Introduction

This procedure applies when a complaint is received that a member of Babergh District Council or Mid Suffolk District Council, or a town/parish member within the Districts or co-opted member, has or may have failed to comply with the adopted code of conduct for members at the time of the alleged breach.

A complaint is confidential and remains so until the complaint is resolved.

Making a complaint

The person making the complaint will be referred to as “the complainant” and the person against whom the complaint is made will be referred to as the “subject member”.

A complaint **should** be made using the standard complaint form (available on the Councils’ website via the following links):

<https://www.babergh.gov.uk/the-council/making-a-complaint-about-a-councillor/>

<https://www.midsuffolk.gov.uk/the-council/making-a-complaint-about-a-councillor/>

Alternatively, the complaint may be submitted in writing by email or post to:-

Monitoring.officer@baberghmidsuffolk.gov.uk

Monitoring Officer, Babergh and Mid Suffolk District Councils, Endeavour House, 8 Russell Road, Ipswich, IP1 2BX

Anonymous Complaints

The Monitoring Officer will not normally consider anonymous complaints.

Confidentiality

As a matter of fairness and natural justice, the subject member should usually be told who has complained about them and receive details of the complaint. However, in exceptional circumstances, the Monitoring Officer may withhold the complainant’s identity if on request from the complainant, they are satisfied that the complainant has evidence and reasonable grounds for believing that they or any witness relevant to the complaint may be at risk of actual harm, or their employment may be jeopardised if their identity is disclosed.

If the Monitoring Officer decides to anonymise the complaints details from the subject member this will be kept under review.

If the Monitoring Officer decides to refuse a request by a complainant for confidentiality, they will offer the complainant the option to withdraw the complaint, rather than proceed with their identity being disclosed.

The subject member's response is confidential.

Acknowledgement

The Governance Team will normally acknowledge the complaint within five working days of receipt and will advise if the complaint will be passed for initial assessment by the Monitoring Officer or rejected.

The complaint may be rejected if:

- It is against the whole District Council or a whole town/parish council, or the complaint is about service provision rather than conduct.
- It is against a town/parish member outside the District Councils' area.
- The subject member was not in office at the time of the alleged misconduct/or at the time of the complaint.

Initial Assessment

The Monitoring Officer will review the complaint and decide whether it should be rejected, merits further investigation, or can be resolved informally.

The Monitoring Officer may seek the views of the Independent Person at this stage to aid consideration and may also request further information from the complainant or the subject member.

This initial assessment will normally be completed within 21 working days of receipt of a complaint. A complaint will be rejected by the Monitoring Officer:

- a) If the complaint is the same or substantially the same as a complaint previously dealt with.
- b) If the period since the alleged behaviour is so significant that it is considered to be inequitable, unreasonable or otherwise not in the public interest to pursue (normally complaints that are more than 12 months old).
- c) If the complaint is trivial or 'tit for tat'.
- d) If the complaint discloses such a minor or technical breach of the Code that it is not in the public interest to pursue.
- e) If the complaint is covered by the Councils' persistent and vexatious complaints policy and is not considered to disclose sufficiently serious potential breaches of the Code to merit further consideration.
- f) If the member against whom the allegation has been made has remedied or made reasonable endeavours to remedy the matter and the complaint does not

disclose sufficiently serious potential breaches of the Code to merit further consideration.

- g) If the complaint is about a person who is no longer a member of a relevant council and there are no overriding public interest reasons to merit further consideration.

If a complaint is rejected at initial assessment, there will be no right of appeal.

If the complaint is rejected the complainant will be advised of the decision. The Monitoring Officer will consider whether it is appropriate to inform the subject member (and political group leader and / or town/parish clerk) that a complaint has been made and of the rejection.

If the complaint is not rejected, the Monitoring Officer will then go on to apply the following criteria in deciding whether a complaint should be dealt with by informal resolution or whether formal investigation is required:

- a) Whether the allegation discloses a potential breach of the code of conduct, but the complaint is not serious enough to merit any recommendation other than an apology,
- b) The resources needed to investigate and determine the complaint are wholly disproportionate to the allegations,
- c) Whether, in all the circumstances, there is no overriding public interest in carrying out an investigation,
- d) whether the complaint suggests that there is a wider problem throughout the authority,
- e) whether training or mediation would be the appropriate response,
- f) whether a substantially similar allegation has previously been made by the complainant.

The decision as to how to proceed will be made by the Monitoring Officer after seeking the views of the Independent Persons and shall be final. There shall be no right of appeal.

Informal Resolution

Wherever possible, the Monitoring Officer will resolve complaints.

The subject member will be sent a copy of the complaint and asked to make written representations in response to the Monitoring Officer within 14 working days. This response must be taken into account when deciding how the complaint will be dealt with.

If the Monitoring Officer considers, after consultation with the Independent Person, that there has been a breach of the code and the matter could reasonably be resolved without the need for a formal investigation, a fair resolution shall be suggested.

Such resolution may include:

- advising the subject member about matters of conduct
- arranging training for the subject member
- advising the subject member that an apology might be appropriate
- suggesting a mediation meeting between the subject member and the complainant

- or another course of action.

The Monitoring Officer will report with full reasons (within 14 working days from receipt of information from the subject member) the outcome of the complaint to the complainant, subject member, and if a parish or town councillor to the clerk to the town/parish council (if appropriate), or where the subject member is a member of Babergh or Mid Suffolk District Councils, the relevant group leader(s) will be informed.

The Monitoring Officer will seek confirmation that the suggested resolution has been complied with.

If the Monitoring Officer is unable to resolve the complaint, then the complaint will be referred to the Suffolk Joint Standards Board for consideration and determination.

Formal investigation

Where, in the opinion of the Monitoring Officer, following consultation with the Independent Person, a formal investigation is required, the Monitoring Officer will appoint an investigating officer to investigate the complaint, gather further evidence and prepare a report. The Monitoring Officer may appoint an external investigating officer if required and to avoid any conflict of interest.

The subject member will be required to co-operate fully with the investigation process.

The Monitoring Officer will review the investigating officer's report, consult the Independent Person and will then either:

- find that there has been no breach of the Code,
- resolve the complaint under Monitoring Officer resolution,
- refer the report to the Suffolk Joint Standards Board for decision,
- or suggest another course of action.

Where the subject member is a member of Babergh and Mid Suffolk District Councils, the relevant group leader(s) will be informed of the investigation and the subsequent outcome. Where the subject member is a town/parish councillor, the town/parish clerk will be informed.

Compliance with sanctions

The decision notices will set out the deadline by any sanction needs to be complied with. In the event of non-compliance by the due date, the matter will be referred to the Suffolk Joint Standards Board.

Right of Appeal

There is no right of appeal to the Monitoring Officer's determination of a code of conduct complaint. However, if a complainant is unhappy with the process followed by the Monitoring Officer in dealing with a complaint, they may complain to the Local Government Ombudsman.

EXPLANATORY NOTES

What is bullying and / or harassment

Those making a complaint usually define what they mean by bullying or harassment – something has happened to them that is unwelcome, unwarranted and causes a detrimental effect.

There are many definitions of bullying and harassment. Bullying (in accordance with the ACAS bullying and harassment at work guidance, June 2014) may be characterised as: offensive; intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient.

Harassment as defined in the Equality Act 2010 is unwarranted conduct related to a relevant protected characteristic which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual.

Conflict of Interest

Where the Monitoring Officer has a conflict of interest in determining a complaint, the Deputy Monitoring Officer or a Monitoring Officer from another authority shall be asked to resolve the complaint.

Additional Information

The Monitoring Officer may require additional information at any stage of the process to come to a decision and may request information from the complainant, subject member and where the complaint relates to town / parish councillor, the clerk of the town/parish council. Such requests will remind those involved of the requirement to keep the matter confidential.

Another course of action

This is not defined but may include mediation, training, other alternative arrangements or where another process or procedure more appropriately applies a referral to that process.

The non-disclosure of a schedule one disclosable pecuniary interest without a reasonable excuse is a criminal offence and could lead to a referral to the Police rather than the matter being dealt with under this procedure.

In the event that the Monitoring Officer receives a complaint regarding a potential disclosable pecuniary interest offence the following steps will be taken:

- The subject member may be asked for comments or a meeting may be arranged.
- The independent persons will be provided with the information and a decision made

as to whether or not the matter should be referred to the police as an alternative course of action and not dealt with under the code of conduct arrangements.

- A referral will only be made where the Monitoring Officer is of the opinion that the member has no reasonable excuse.

Investigating officer

The investigating officer may be a council officer, an officer of another council, or an external investigator.

Independent person

Where possible an Independent Person may be available to support the subject member through the process where the Independent Person has not otherwise been involved in the matter.

Joint Suffolk Standards Board

The parties will be informed of the hearing date and the arrangements in preparation for the meeting. The only witnesses permitted are people referred to in the evidence, and not, for example, character witnesses.

The meeting is held in private as they relate to an individual; although the board's decisions will be published.

What actions might be taken on the recommendations in the panel's reports?

This list is not exhaustive:

- Publish its findings in respect of the member's conduct
- Report its findings to council (or to the town/parish council) for information
- Recommend to council that the member be censured
- Recommend to the member's group leader (or in the case of un-grouped members, recommend to council) that he/she be removed from any or all committees or sub- committees of the council
- Recommend to the leader of the council that the member be removed from the cabinet, or removed from their portfolio responsibilities
- Instruct the Monitoring Officer to (or recommend that the town/parish council) arrange training for the member;
- Recommend to council (or recommend to the town/parish council) that the member should not be appointed and/or be removed from all outside body appointments to which they have been appointed or nominated by the council (or by the town/parish council);
- Withdraw (or recommend to the town/parish council that it withdraws) facilities provided to the member by the council, such as a computer, website and / or email and internet access;
- Exclude (or recommend that the town/parish council exclude) the member from the council's offices or other premises, with the exception of meeting rooms as

- necessary for attending council, committee and sub-committee meetings.
- Require an apology in suitable terms to the Standards Board.

This procedure comes into force on 1 January 2021. It will apply to all new complaints received after this date.